IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

RSA.No. 523 of 2006()

AS.8/2002 of VI ADDL.DISTRICT COURT, ERNAKULAM
OS.344/1994 of I ADDL.SUB COURT,ERNAKULAM

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: SECOND APPELLANT/APPELLANT/PLAINTIFF

ROSY, W/O.ANTONY,
AGED 56, ELANJIMATTOM HOUSE,
NETTOOR DESOM, MARADU VILLAGE.

BY ADV. SRI.S.SREEKUMAR
SRI.P.K.SOYUZ

RESPONDENTS: DEFENDANTS

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1. ROSY, AGED 75,
W/O.LATE ABRAHAM, 3474-LONG VIEW, AVE,
ROCHESTER HILLS MICHIGN, 48307, U.S.A.

2. MARY, AGED 57, W/O.JOSEPH,
48430, MONTESLPRE, SHELLY TOWNSHIP,
MITICHIGN, 48315 U.S.A.

3. JOSEPH, AGED 54, S/O.LATE
ABRAHAM, VILLANASSERY, PERUMANOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

4. TRESSA, AGED 49,
W/O.LONAPPAN, J EDACKATT, NO.38,
VTH CROSS, GANESH BLOCK, R.T.NAGAR,
POST, BANGALORE-500 032.

5. PHILOMINA, AGED 47, WIFE OF JOSEPH,
VALIAPARAMBIL HOUSE, NETTOOR P.O.,
MARADU VILLAGE, KANAYANNUR TALUK.

6. ANTONY, AGED 45, S/O.LATE ABRAHAM,
EMERALD APTS, 370 E 43, MILE ROAD,
APTNOL-24, MAIDSON HIGHTS MICHIGN, 48071, U.S.A.

7. GEORGE, AGED 40, S/O.LATE ABRAHAM,

1735 VANCORT LAND, TROY MICHIGN-48083, U.S.A.

8. ROY, AGED 37, S/O.LATE ABRAHAM,
VILLANASSERY, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

9. REENA, AGED 34, D/O.LATE ABRAHAM,
48307-3474, LONG VIEW, AVE ROCHESTEPHILIS,
MICHIGN, U.S.A.

10. GEORGE, AGED 67, S/O.LATE JOSEPH,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

11. PUSHPY, AGED 69,
W/O.LATE ANTONY, VILLANASSERY HOUSE,
PERUMANNOOR DESOM, ERNAKULAM VILLAGE,
KANAYANNUR TALUK.

12. XAVIER, AGED 49,
S/O.LATE ANTONY, VILLANASSERY HOUSE,
PERUMANNOOR DESOM, ERNAKULAM VILLAGE,
KANAYANNUR TALUK.

13. BABY, AGED 52, D/O.LATE ANTONY,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

14. LAILA, AGED 38, D/O.LATE ANTONY,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

15. SHEEBA, AGED 34, D/O.LATE ANTONY,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

16. SABU, AGED 36, S/O.LATE ANTONY,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

17. NIMA, AGED 22, D/O.ALPHONSA,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

18. CELINE, AGED 70,
W/O.LATE JOSEPH, VILLANASSERY HOUSE,
PERUMANNOOR DESOM, ERNAKULAM VILLAGE,
KANAYANNUR TALUK.

19. MONY, AGED 49, D/O.LATE JOSEPH,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

20. JOSEPH, AGED 47, S/O.LATE JOSEPH,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

21. ANTONY, AGED 45, S/O.LATE JOSEPH,
PERUMANNOOR DESOM, ERNAKULAM VILLAGE,
KANAYANNUR TALUK (DIED).

22. FRANCIS, AGED 43, S/O.LATE JOSEPH,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

23. PETER, AGED 41, S/O.LATE JOSEPH,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

24. SHAJAN, AGED 39, S/O.LATE JOSEPH,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

25. MEENA, AGED 31, D/O.LATE JOSEPH,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

26. LUCY, AGED 43, W/O.LATE ANTONY,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

27. DON, AGED 14, S/O.LATE ANTONY,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK, REPRESENTED
BY HIS MOTHER AND GUARDIAN LUCY, AGED 43,
VILLANASSERY HOUSE, PERUMANNOOR DESOM, ERNAKULAM
VILLAGE, KANAYANNUR TALUK.

28. DIASY, AGED 12, S/O.LATE ANTONY,
REPRESENTED BY HER MOTHER AND GUARDIAN LUCY.

29. MONICA, AGED 8, D/O.ANTONY,
VILLANASSERY HOUSE, PERUMANNOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK, REPRESENTED
BY HIS MOTHER AND GUARDIAN LUCY, AGED 43,
VILLANASSERY HOUSE, PERUMANNOOR DESOM, ERNAKULAM
VILLAGE, KANAYANNUR TALUK.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 19/07/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 523 OF 2006

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DATED THIS THE 19th DAY OF JULY, 2007

JUDGMENT

Plaintiff in O.S.344 of 1994 on the file of Sub Court, Ernakulam is the appellant. Respondents are the defendants. Appellant instituted the suit seeking a decree for partition and separation of her share in the plaint schedule property. The plaint schedule property admittedly originally belonged to Late Ouso Abraham, respondent No.10. Antony and Alphonsa are his children. First respondent is the widow and appellant and respondents 2 to 9 are the children of Abraham. Respondents 18 to 25 are the legal heirs of deceased Antony. 17th respondent is the legal heir of deceased Alphonsa. Ouso died on 16.7.1975. Abraham died on 7.6.1992. Appellant is claiming share in the plaint schedule property contending that under Ext.A1 settlement deed executed in 1963 and under Ext.A3 partition deed, plaint schedule property was alloted to the share of Abraham and on the death of Abraham all his legal heirs are entitled to a share and therefore she is entitled to get her share separated. It was contended that though Ext.A1 shows that the property was alloted to Abraham and minor sons respondents 3,

6 and 7, it was actually for the benefit of the family of Abraham and the minor children were also shown for the reason that Abraham was a spendthrift and to prevent the property from alienation. Contesting respondents disputed the plaint claim and contended that under Ext.A1, the property was alloted to Abraham and respondents 3, 6 and 7 and therefore the appellant or others are not entitled to claim any share.

2. Learned Sub Judge, on the evidence of Pws 1 to 3, Dws 1 to 3, Exts.A1 and A2 and Ext.B1, found that under Ext.A1, the property was alloted to Abraham and then minor sons respondents 3, 6 and 7 and appellant or others are not entitled to claim any share except a share in the share of Abraham. Finding that as the legal heirs of deceased Abraham, appellant is entitled only that share of Abraham, viz 2/27, a preliminary decree was passed. Appellant challenged the decree and judgment before District Court, Ernakulam in A.S.8 of 2002. Learned District Judge, on reappreciation of evidence, confirmed the findings of learned Sub Judge and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant was heard. The argument of the learned counsel is that though under Ext.A1

plaint schedule property was also alloted to respondents 3, 6 and 7, they did not execute Ext.A1 and from the evidence, it is clear that Abraham was a spendthrift and the minors name was shown in Ext.A1 only to prevent alienation of the property by Abraham the father so that it is available to the family of Abraham and as Abraham died intestate appellant is also entitled to the share in the whole property. Learned counsel also argued that a reading of Ext.A1 shows that the property alloted under B schedule therein was given to Abraham and his family and not to Abraham and named minor children and therefore courts below should have granted a decree for partition holding that the entire plaint schedule property belonged to Abraham and on his death it devolved on the widow and children.

4. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal. The trial court and first appellate court properly appreciated Ext.A1 and found that under Ext.A1 the property was given to Abraham as well as the children named therein. When under Ext.A1 settlement deed properties were set apart to the minor children respondents 3, 6 and 7, with regard to the right given to the children who have no other right otherwise

can only be treated as a gift. Under Ext.A1, B schedule therein was alloted to Abraham and the minor children respondents 3, 6 and 7. If so, appellant is only entitled to claim her share as legal heir of the father which devolved on her mother and children including appellant courts below granted a preliminary decree directing division of that share which was available to Abraham and later devolved on his widow and children. A preliminary decree to divide that share was passed.

As no substantial question of law is involved appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

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